

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ALMONT AMBULATORY SURGERY
CENTER, LLC, a California limited
liability company, et al. ,

Plaintiffs,

vs.

UNITEDHEALTH GROUP, INC.;
UNITED HEALTHCARE SERVICES,
INC.; UNITED HEALTHCARE
INSURANCE COMPANY, INC.;
OPTUMINSIGHT, INC.; and DOES 1-
20,

Defendants.

Case No. 2:14-CV-03053-MWF (VBKx)

**~~[PROPOSED]~~ STIPULATED
PROTECTIVE ORDER**

Judge: Hon. Michael W. Fitzgerald

Magistrate Judge: Hon. Victor B. Kenton

Trial Date: None Set

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Proposed Protective Order does not entitle them to file confidential information under seal; Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

1 Based upon the Stipulation of the parties and pursuant to Rule 26(c) of the
2 Federal Rules of Civil Procedure, IT IS HEREBY ORDERED that:

3 **2. DEFINITIONS**

4 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
5 information or items under this Order.

6 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how
7 it is generated, stored or maintained) or tangible things that qualify for protection
8 under Federal Rule of Civil Procedure 26(c), including but not limited to patient
9 records and data, claim files, non-public financial records and data, employee or
10 personnel files, customer or client lists, confidential contracts, other healthcare-related
11 information protected by The Health Insurance Portability and Accountability Act of
12 1996, and all other information that the party in good faith believes will, if disclosed,
13 cause harm to the Producing Party’s competitive position.

14 2.3 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
15 Items: subset of information (regardless of how it is generated, stored or maintained)
16 or tangible things that qualify for protection under Federal Rule of Civil Procedure
17 26(c) subject to limited disclosure as set forth in Paragraph 7.3, that will, if disclosed,
18 cause substantial competitive and economic harm to the Producing Party. This
19 includes, but is not limited to, trade secrets, United’s proprietary claims-review and
20 audit processes, and all other non-public, proprietary financial, regulatory, or strategic
21 information and data, to the extent that any of these categories of information or
22 tangible things will, if disclosed, cause substantial competitive and economic harm to
23 the Producing Party.

24 2.4 Counsel (without qualifier): Outside Counsel of Record and House
25 Counsel (as well as their support staff).
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1 2.5 Designating Party: a Party or Non-Party that designates information or
2 items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

4 2.5 Disclosure or Discovery Material: all items or information, regardless of
5 the medium or manner in which it is generated, stored, or maintained (including,
6 among other things, testimony, transcripts, and tangible things), that are provided,
7 produced or generated in relation to the claims and disputes in this matter or in
8 disclosures or responses to discovery in this matter.

9 2.6 Expert: a person with specialized knowledge or experience in a
10 matter pertinent to the litigation who has been retained by a Party or its counsel to
11 serve as an expert witness or as a consultant in this action.

12 2.7 House Counsel: attorneys who are employees of a party to this
13 action. House Counsel does not include Outside Counsel of Record or any other
14 outside counsel.

15 2.8 Non-Party: any natural person, partnership, corporation,
16 association, or other legal entity not named as a Party to this action.

17 2.9 Outside Counsel of Record: attorneys who are not employees of
18 a party to this action but are retained to represent or advise a party to this action and
19 have appeared in this action on behalf of that party or are affiliated with a law firm
20 which has appeared on behalf of that party.

21 2.10 Party: any party to this action, including all of its officers,
22 directors, employees, consultants, retained experts, and Outside Counsel of Record
23 (and their support staffs).

24 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
25 Discovery Material in this action.

26 2.12 Professional Vendors: persons or entities that provide litigation
27 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
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demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.13 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL” or CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

2.15 United: Collectively, UnitedHealth Group, Inc., United Healthcare Services, Inc.; United Healthcare Insurance Company, Inc.; and OptumInsight, Inc.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also any and all copies, excerpts, or compilations of Protected Material. However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without

1 prejudice; and (2) final judgment herein after the completion and exhaustion of all
2 appeals, rehearings, remands, trials, or reviews of this action, including the time limits
3 for filing any motions or applications for extension of time pursuant to applicable law.

4 **5. DESIGNATING PROTECTED MATERIAL**

5 5.1 Exercise of Restraint and Care in Designating Material for Protection.

6 Each Party or Non-Party that designates information or items for protection
7 under this Order must take care to limit any such designation to specific material that
8 qualifies under the appropriate standards.

9 If it comes to a Designating Party's attention that information or items that it
10 designated for protection do not qualify for protection, that Designating Party must
11 promptly notify all other Parties that it is withdrawing the mistaken designation.

12 5.2 Manner and Timing of Designations.

13 Except as otherwise provided in this Order (see, e.g., second paragraph of
14 Section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery
15 Material that qualifies for protection under this Order must be clearly so designated
16 before the material is disclosed or produced. Designation in conformity with this
17 Order requires:

18 (a) for information in documentary form (e.g., paper or electronic
19 documents, but excluding transcripts of depositions or other pretrial or trial
20 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or
21 "CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page that contains
22 protected material. If only a portion or portions of the material on a page qualifies for
23 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
24 by making appropriate markings in the margins).

25 (b) for testimony given in a deposition, confidentiality designations shall
26 be made either on the record or by written notice to the other party within 14 days of
27 receipt of the transcript. Unless otherwise agreed, depositions shall be treated as
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1 “Confidential” during the 14-day period following receipt of the transcript. The
 2 deposition of any witness (or any portion of such deposition) that encompasses
 3 Confidential information shall be taken only in the presence of persons who are
 4 qualified to have access to such information.

5 (c) for information produced in some form other than documentary and
 6 for any other tangible items, that the Producing Party affix in a prominent place on the
 7 exterior of the container or containers in which the information or item is stored the
 8 legend “CONFIDENTIAL” or CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If
 9 only a portion or portions of the information or item warrant protection, the Producing
 10 Party, to the extent practicable, shall identify the protected portion(s).

11 5.3 Inadvertent Failures to Designate.

12 If timely corrected, an inadvertent failure to designate qualified information or
 13 items does not, standing alone, waive the Designating Party’s right to secure protection
 14 under this Order for such material. Upon timely correction of a designation, the
 15 Receiving Party must make reasonable efforts to assure that the material is treated in
 16 accordance with the provisions of this Order.

17 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

18 All challenges to confidentiality designations shall proceed under Local Rule
 19 37-1 through Local Rule 37-4.

20 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

21 7.1 Basic Principles.

22 A Receiving Party may use Protected Material that is disclosed or produced by
 23 another Party or by a Non-Party in connection with this case only for prosecuting,
 24 defending, or attempting to settle this litigation or related litigation involving some or
 25 all of the parties hereto. Such Protected Material may be disclosed only to the
 26 categories of persons and under the conditions described in this Order. When the
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1 litigation has been terminated, a Receiving Party must comply with the provisions of
2 Section 13 below.

3 Protected Material must be stored and maintained by a Receiving Party at a
4 location and in a secure manner that ensures that access is limited to the persons
5 authorized under this Order.

6 7.2 Disclosure of "CONFIDENTIAL" Information or Items.

7 Unless otherwise ordered by the court or permitted in writing by the Designating
8 Party, a Receiving Party may disclose any information or item designated
9 "CONFIDENTIAL" only to:

10 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
11 employees of said Outside Counsel of Record to whom it is reasonably necessary to
12 disclose the information for this litigation;

13 (b) the officers, directors, and employees (including House Counsel) of the
14 Receiving Party to whom disclosure is reasonably necessary for this litigation;

15 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
16 is reasonably necessary for this litigation and who have signed the "Acknowledgment
17 and Agreement to Be Bound" (Exhibit A);

18 (d) the court and its personnel;

19 (e) court reporters and their staff, professional jury or trial consultants, mock
20 jurors, licensed private investigators retained by Counsel, and Professional Vendors to
21 whom disclosure is reasonably necessary for this litigation and who have signed the
22 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

23 (f) during their depositions, witnesses in the action to whom disclosure is
24 reasonably necessary and who have signed the "Acknowledgment and Agreement to
25 Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered
26 by the court. Pages of transcribed deposition testimony or exhibits to depositions that
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1 reveal Protected Material must be separately bound by the court reporter and may not
2 be disclosed to anyone except as permitted under this Stipulated Protective Order.

3 (g) the author or recipient of a document containing the information or a
4 custodian or other person who otherwise possessed or knew the information.

5 7.3 Disclosure of "CONFIDENTIAL – ATTORNEYS' EYES ONLY"
6 Information or Items.

7 Unless otherwise ordered by the court or permitted in writing by the Designating
8 Party, a Receiving Party may disclose any information or item designated
9 "CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

10 (a) the Receiving Party's Outside Counsel of Record in this action;

11 (b) United's House Counsel in this action, which for purposes of this provision
12 only is limited to the following individuals: Steven Burstein, Linda Daugherty and
13 Carolyn Ham;

14 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
15 is reasonably necessary for this litigation and who have signed the "Acknowledgment
16 and Agreement to Be Bound" (Exhibit A);

17 (d) the court and its personnel;

18 (e) court reporters and their staff, professional jury or trial consultants, mock
19 jurors, licensed private investigators retained by Counsel, and Professional Vendors to
20 whom disclosure is reasonably necessary for this litigation and who have signed the
21 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

22 (f) during their depositions, witnesses in the action to whom disclosure is
23 reasonably necessary and who have signed the "Acknowledgment and Agreement to
24 Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered
25 by the court. Pages of transcribed deposition testimony or exhibits to depositions that
26 reveal Protected Material must be separately bound by the court reporter and may not
27 be disclosed to anyone except as permitted under this Stipulated Protective Order.
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1 (g) the author or recipient of a document containing the information or a
 2 custodian or other person who otherwise possessed or knew the information.

3 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**

4 If a Party receives a request from a government agency, or a subpoena, or a
 5 court order issued in other litigation that compels disclosure of any information
 6 designated by an opposing or third party in this Action as “CONFIDENTIAL” or
 7 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” that Party must:

8 (a) unless prohibited by a Court Order, or specifically prohibited by a statute or
 9 regulation cited to the producing party by the requesting party, promptly notify in
 10 writing the Designating Party. Such notification shall include a copy of the subpoena
 11 or court order, unless prohibited by law;

12 (b) promptly notify in writing the party who caused the request, or subpoena, or
 13 order to issue in the other litigation that some or all of the material covered by the
 14 subpoena or order is subject to this Protective Order. Such notification shall include a
 15 copy of this Stipulated Protective Order; and

16 (c) when applicable, as set forth in ¶ (a), cooperate with respect to all reasonable
 17 procedures sought to be pursued by the Designating Party whose Protected Material
 18 may be affected. However, the parties must follow the procedures set forth in Federal
 19 Rule of Civil Procedure 45(d)(2) when asserting that subpoenaed or requested
 20 information is subject to a privilege. The filing of a motion for a protective order does
 21 not, by itself, stay compliance with a subpoena.

22 If the Designating Party timely seeks a protective order from a court of
 23 competent jurisdiction, the Party served with the subpoena or court order shall not
 24 produce any information designated in this action as “CONFIDENTIAL” before a
 25 determination by the court from which the subpoena or order issued, unless the Party
 26 has obtained the Designating Party's permission or as otherwise required by law or
 27 court order. The Designating Party shall bear the burden and expense of seeking
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1 protection in that court of its confidential material and nothing in these provisions
2 should be construed as authorizing or encouraging a Receiving Party in this Action to
3 disobey a lawful directive from another court.

4 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
5 **PRODUCED**

6 9.1 The terms of this Order are applicable to information, documents and/or
7 tangible things produced by a Non-Party in this action, and designated as
8 "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY." Such
9 information produced by Non-Parties, when so designated by the Non-Party upon
10 production or by any other Party pursuant to Section 9.2 below, is protected by the
11 remedies and relief provided by this Order. Nothing in these provisions should be
12 construed as prohibiting a Non-Party from seeking additional protections.

13 9.2 Upon production of information, documents and/or tangible things by a
14 Non-Party to any Party in this action, the receiving Party must notify every other Party
15 of said production and provide a copy of said production to every other Party within
16 two weeks after the production date. Within three weeks of receiving notice and a
17 copy of the production, any other Party who has a specific, concrete and identifiable
18 interest in any of the information, documents, and/or tangible things that were
19 produced by the Non-Party may designate any of the information, documents, and/or
20 tangible things as "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES
21 ONLY." If the Non-Party production is voluminous, the parties may agree to an
22 extended timeframe in which to produce and designate the documents. For purposes
23 of this section, a Party has a specific, concrete, and identifiable interest, for instance, in
24 records held by a Non-Party that pertain to the Party's business dealings, including, but
25 not limited to, bank records or other financial records; mailbox records; patient
26 medical or billing records; correspondence; agreements; or electronic information or
27 documents stored by the Non-Party in a "cloud-based" service. If a Non-Party assigns
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1 one confidentiality designation to the produced material, and a Party who has a
2 specific, concrete, and identifiable interest in that material elects to assign a different
3 confidentiality designation to the same material, the designating Party's confidentiality
4 designations shall control. Any disputes between Parties over confidentiality
5 designations made pursuant to this subsection 9.2 shall be governed by the procedures
6 set forth in Section 6 above and comport with this District's Local Rules.

7 9.3 In the event that a Party is required, by a valid discovery request, to
8 produce a Non-Party's confidential information in its possession, and the Party is
9 subject to an agreement with the Non-Party not to produce the Non-Party's
10 confidential information, then the Party shall:

11 (a) promptly notify in writing the Requesting Party and the Non-Party that
12 some or all of the information requested is subject to a confidentiality agreement
13 with a Non-Party;

14 (b) promptly provide the Non-Party with a copy of the Stipulated
15 Protective Order in this litigation, the relevant discovery request(s), and a
16 reasonably specific description of the information requested; and

17 (c) make the information requested available for inspection by the Non-
18 Party.

19 If the Non-Party fails to object or seek a protective order from this Court within
20 fourteen (14) days of receiving the notice and accompanying information, the
21 Receiving Party may produce the Non-Party's confidential information responsive to
22 the discovery request. If the Non-Party timely seeks a protective order, the Receiving
23 Party shall not produce any information in its possession or control that is subject to
24 the confidentiality agreement with the Non-Party before a determination by the court.
25 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
26 of seeking protection in this court of its Protected Material.

27 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**
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1 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
2 Protected Material to any person or in any circumstance not authorized under this
3 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
4 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
5 all unauthorized copies of the Protected Material, (c) inform the person or persons to
6 whom unauthorized disclosures were made of all the terms of this Order, and (d)
7 request such person or persons to execute the “Acknowledgment and Agreement to Be
8 Bound” that is attached hereto as Exhibit A.

9 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
10 **PROTECTED MATERIAL**

11 In accordance with Federal Rule of Civil Procedure 26(b)(5)(B) and Federal
12 Rule of Evidence 502, any Party who inadvertently produces Discovery Material that
13 is privileged or otherwise immune from discovery shall, promptly upon discovery of
14 such inadvertent production, so advise the Producing Party and request that the
15 Discovery Materials be returned. The Receiving Party shall return, sequester, or
16 destroy such inadvertently produced Discovery Materials, including all copies, within
17 five (5) business days of receiving such a written request. The Party returning such
18 inadvertently produced Discovery Materials may thereafter seek re-production of any
19 such Discovery Materials pursuant to applicable law.

20 **12. MISCELLANEOUS**

21 **12.1 Right to Further Relief.**

22 Nothing in this Order abridges the right of any person to seek its modification by
23 the court in the future.

24 **12.2 Right to Assert Other Objections.**

25 By stipulating to the entry of this Protective Order no Party waives any right it
26 otherwise would have to object to disclosing or producing any information or item on
27 any ground not addressed in this Stipulated Protective Order. Similarly, no Party
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1 waives any right to object on any ground to use in evidence of any of the material
2 covered by this Protective Order.

3 **12.3 Filing Protected Material.**

4 Without written permission from the Designating Party or a court order secured
5 after appropriate notice to all interested persons, a Party may not file in the public
6 record in this action any Protected Material. A Party that seeks to file under seal any
7 Protected Material must comply with Local Rule 79-5. Protected Material may only be
8 filed under seal pursuant to a court order authorizing the sealing of the specific
9 Protected Material at issue. Pursuant to Local Rule 79-5, a sealing order will issue
10 only upon a request establishing that the Protected Material at issue is privileged,
11 protectable as a trade secret, or otherwise entitled to protection under the law. If a
12 Receiving Party's request to file Protected Material under seal pursuant to Local Rule
13 79-5 is denied by the court, then the Receiving Party may file the information in the
14 public record unless otherwise instructed by the court.

15 **13. FINAL DISPOSITION**

16 Within 60 days after the final disposition of this action, as defined in paragraph
17 4, each Receiving Party must return all Protected Material to the Producing Party or
18 destroy such material. As used in this subdivision, "all Protected Material" includes all
19 copies, abstracts, compilations, summaries, and any other format reproducing or
20 capturing any of the Protected Material. Whether the Protected Material is returned or
21 destroyed, the Receiving Party must submit a written certification to the Producing
22 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
23 deadline that (1) identifies (by category, where appropriate) all the Protected Material
24 that was returned or destroyed and (2) affirms that the Receiving Party has not retained
25 any copies, abstracts, compilations, summaries or any other format reproducing or
26 capturing any of the Protected Material. Notwithstanding this provision, Counsel are
27 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and
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1 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
2 expert reports, attorney work product, and consultant and expert work product, even if
3 such materials contain Protected Material. Any such archival copies that contain or
4 constitute Protected Material remain subject to this Protective Order as set forth in
5 Section 4 (DURATION).

6 IT IS SO ORDERED.
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10 Dated: January 28, 2015

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/s/

Victor B. Kenton
United States Magistrate Judge

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its
entirety and understand the Stipulated Protective Order that was issued by the United
States District Court for the Central District of California on [_____] in the case of
Almont Ambulatory Surgery Center, LLC, et al. v. UnitedHealth Group, Inc., et al.,
Case No: CV14-3053-MWF-VBK.

I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly promise
that I will not disclose in any manner any information or item that is subject to this
Stipulated Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

[printed name]

Signature: _____

[signature]